

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
AT&T Corporation and Tele-) CS Docket No. 98-178
Communications, Inc.)
)
Proposed Transfer of Control)

COMMENTS OF THE
CONSUMER ELECTRONICS MANUFACTURERS ASSOCIATION

The Consumer Electronics Manufacturers Association (CEMA) herewith submits comments on the joint applications of AT&T Corporation (AT&T) and Tele-Communications, Inc. (TCI) requesting Commission approval to transfer to AT&T the licenses and authorizations controlled by TCI.

CEMA directs its comments to the single issue of cable carriage of digital broadcast signals by AT&T if the merger is approved by the Commission. Specifically, CEMA requests that the Commission, through an appropriate condition or otherwise, ensure that the successor entity to TCI abide by TCI's commitment to carry digital broadcast signals on its cable systems in the formats and quality in which they originally were broadcast; and that its digital set-top boxes convert to NTSC all formats used by broadcasters. This is the commitment made by the President of TCI before the Congress, and this commitment should be honored by AT&T as well. Doing so

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would prevent TCI's successor from using its increased power to be a "gatekeeper" and selectively passing through and converting only some of the digital formats used by broadcasters.

INTRODUCTION AND STATEMENT OF INTEREST

CEMA is the principal U.S. trade association representing the consumer electronics industry. CEMA members design, manufacture, distribute and sell consumer electronics products, including digital and analog television receivers, video cassette recorders (VCRs), digital versatile disk (DVD) players, direct broadcast satellite (DBS) equipment, personal computers, and a wide variety of other devices that connect and enhance these products. CEMA's 450 members include all of the country's major consumer electronics manufacturers, as well as many smaller companies that design, produce, distribute, and service consumer electronics products in the United States.

CEMA members have invested almost one billion dollars in the new digital broadcast system that is scheduled to be introduced to consumers during November. They have designed, built, and are beginning to distribute studio equipment and digital television receivers. CEMA co-founded WHD, the model DTV station in Washington, D.C.; was a major contributor to the Advanced Television Test Center (ATTC); was a founding member of the Advanced Television Systems Committee (ATSC); and contributed to the FCC's Advisory Committee on Advanced Television Service (ACATS).

AT&T MUST HONOR TCI'S EXPLICIT COMMITMENT BOTH TO PASS THROUGH AND TO CONVERT TO NTSC ALL ATSC DIGITAL FORMATS USED BY BROADCASTERS

Congress established a national goal of completing the transition from analog to digital broadcasting and recovery of the analog spectrum by the end of 2006. Congress set this deadline so that the spectrum used for analog broadcasting would be returned and reissued for other uses.

When establishing the deadline, Congress recognized cable's dominant role in providing broadcast programming to the American public.^{1/} Congress statutorily provided that the Commission shall extend the 2006 deadline if more than 15 percent of television households in a market either do not subscribe to cable or other multiple video provider that carries digital programming from each of the local digital broadcast stations or do not have at least one digital television receiver or analog television receiver equipped with a digital-to-analog decoder.^{2/}

TCI is substantially larger than any other cable operator in the United States, serving 29.3 percent of all cable subscribers -- the only cable operator serving more than 20 percent of the market.^{3/} TCI also holds substantial interests in companies that produce cable video programs, including Discovery Communications, USA Networks, BET Holdings, Fox/Liberty Networks, QVC, MacNeil/Lehrer Productions and Encore Media Group.

CEMA's focus is the transition from analog to digital broadcasting and the critical role of cable to the success of that transition. TCI is a market leader in the cable industry by virtue of its position as the largest cable system. It will exercise even more influence when and if it is merged with AT&T, which is the nation's largest domestic and international long distance carrier. TCI's

^{1/} More than two-thirds of U.S. households subscribe to cable, *see Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 97-141, 13 FCC Rcd. 1304 (released January 13, 1998).

^{2/} 47 U.S.C. § 309(j)(14). The Commission earlier had established 2006 as its goal for ending the transition and returning the analog spectrum, *see Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 12809 (1997), recon., 13 FCC Rcd 6860 (1998).

^{3/} See Table E-3 in the F.C.C.'s *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 97-141, 13 FCC Rcd 1304 (1998).

treatment of digital broadcast signals will be a bellwether for the cable industry as a whole, and will directly affect the timing of the digital transition and achievement of the Congressional and Commission goal to complete the transition and recover the relinquished analog spectrum.

While the focus of this proceeding is on AT&T and competition in local exchange telephony and data services, we urge the Commission also to recognize TCI's dominant role in the cable industry, its pivotal role in the transition of broadcasting from analog to digital, and the public interest in a rapid and smooth transition as repeatedly expressed both by Congress and the Commission. In order for the Commission to approve transfers of licenses underlying a merger, applicants must demonstrate that the proposed transaction is in the public interest, *inter alia*, because it includes benefits that will enhance competition.^{4/} TCI and AT&T posit that the proposed merger is in the public interest because, *inter alia*, AT&T intends to accelerate digitization of TCI's cable network and provide competitive offerings in the local exchange and internet access markets. This network digitization also will add capacity for hundreds of digital video channels. CEMA takes no position on telephony and data issues. CEMA does urge that the Commission, before approving this merger, consider the video services market as well as the telephony and data markets, and ensure that AT&T will abide by TCI's commitments to pass through its digital set-top boxes all digital formats used by broadcasters, and also to convert all such formats to analog NTSC, including both the 720 progressive and 1080 interlace formats used

^{4/} See, e.g., *In the Matter of WorldCom, Inc. and MCI Communications Corporation for Transfer and Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, *Memorandum Opinion and Order*, FCC 98-225 at para. 9 (rel. September 14, 1998) (*WorldCom/MCI Order*); *Bell Atlantic/NYNEX Order*, 12 FCC Rcd. at 20003, para. 32; *BT/MCI Order*, 12 FCC Rcd. at 15365, para. 29.

by broadcasters. With this assurance, the accelerated conversion of TCI's cable plant to digital also will help achieve the national goal of completing the television broadcast transition.

In testimony before the House Subcommittee on Telecommunications, Trade, and Consumer Protection earlier this year, Leo J. Hindery, Jr., President of TCI, undertook to facilitate the transition to digital broadcasting as part of the same cable deployment of digital technologies that TCI and AT&T now argue will be accelerated and ensured by approval of the proposed merger. Mr. Hindery testified that the digital cable boxes used by TCI will pass through all formats used by broadcasters; that the boxes also will convert some of the formats to analog NTSC (to enable viewing of the digital signals on legacy NTSC receivers); and, in addition, that the boxes will be made to convert 1080 interlace as well as the 480 progressive and 720 progressive formats if broadcasters employ the 1080 interlace format:

I know that the question of whether cable systems will pass through broadcast HDTV formats to consumers has received a significant amount of attention in recent months. The answer is very straightforward. Let me be unmistakably clear: *Cable operators' upcoming advanced digital customer terminals will be capable of passing through to HDTV televisions all HDTV formats, including 720p and 1080i formats. (Prepared statement, emphasis in original.)*

^{5/}

^{5/} *High Definition Television: Coming to a Home Theater Near You*, Hearing Before the Subcommittee on Telecommunications, Trade, and Consumer Protection of the Committee on Commerce, U.S. House of Representatives, 105th Cong., 2d Sess. (Serial No. 105-89) at p. 34 (1998).

In response to questions from Chairman Tauzin, Mr. Hindery committed to have the cable boxes convert all formats to analog NTSC, including 1080 interlace, if broadcasters use 1080 interlace.

Mr. Hindery. We convert the formats as well; 480 progressive, 720 progressive. I make the comment that if the ultimate standard is constantly at the 1080 interlace, then we simply add additional processing to handle the conversion even of that signal.

* * * *

Mr. Tauzin. So I take it if by the time the time comes some of these gentlemen and the networks are broadcasting in 1080i, what you are telling us is that you are prepared to have adjusted your box so that it does in fact convert 1080i to the analog set?

Mr. Hindery. That is correct.^{6/}

We request that the explicit commitments made by TCI to Congress and the American public be affirmatively required of its new owner, AT&T. Over two-thirds of the American public rely upon cable to deliver broadcast signals. As a practical matter, therefore, cable carriage of broadcasters' digital signals is essential to meeting the Congressional goal of completing the transition by 2006.

We recognize that interpretation of the "must carry" statutory provisions is being addressed by the Commission in an open proceeding, CS Docket No. 98-120.^{7/} It is not our purpose here to address the generic obligations of cable operators to carry broadcast signals, but rather, to address the obligations and commitments of TCI and, if the proposed merger is approved, of AT&T.

^{6/} *Id.* at 71.

^{7/} *Notice of Proposed Rulemaking* in CS Docket No. 98-120, 13 FCC Rcd 15092 (1998).

CONCLUSION

Any uncertainty with regard to the availability of the broadcasters' digital signals will prolong the digital television transition period and increase its costs to American consumers. The proposed merger of TCI with AT&T could delay the transition and increase its costs to American consumers, or conversely, it could accelerate the transition by increasing the availability of digital broadcast signals to the public. Requiring that AT&T abide by TCI's commitments as stated to Congress would serve the public interest by providing a more rapid and successful transition to digital television .

Respectfully Submitted,

**CONSUMER ELECTRONICS
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of the Consumer Electronics Manufacturers Association was, by first-class U.S. mail, postage prepaid, served this 29th day of October, 1998, upon the following:

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